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Attorneys for Defendant
APPLE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE APPLE iPod tunes ANTI-TRUST LITIGATION

Case No. C 05-00037 JEW
C 06-04457 JEW

DECLARATION OF ROBERT MITTELSTAEDT IN SUPPORT OF APPLE INC.'S ADMINISTRATIVE MOTION TO SET BRIEFING SCHEDULE

I, Robert Mittelstaedt, declare as follows:

1. I am counsel of record for Apple Inc. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently thereto.

2. Apple filed its motion to decertify the Rule 23(b)(3) class on August 31, 2009, and noticed it for hearing for October 5, 2009. On September 16, modifying a stipulation proposed by the parties (*see* Doc. 257), the Court continued the hearing date to November 9, and ordered that briefing shall be completed by October 19.

Dockets.Justia.com

3. On September 18, I telephoned plaintiffs' lead counsel, Bonny Sweeney, to discuss dates for plaintiffs' opposition brief, for Apple to depose any expert whose declaration they might submit, and for Apple's reply brief. I asked Ms. Sweeney if she would agree to file plaintiffs' opposition papers by October 1 or 5 so that Apple would have time to depose their expert and prepare its reply papers. Ms. Sweeney stated that her schedule prevented her from filing her opposition before October 12 even though that would leave Apple only seven days for its reply. She did not say that other lawyers in her firm or the other attorneys of record from other firms were also unavailable to prepare their opposition brief.

3. In an effort to persuade Ms. Sweeney to agree to file plaintiffs' opposition papers before October 12, I offered to move up the deposition of Apple's expert from September 28 to the week of September 21. Ms. Sweeney declined.

4. On September 21, Ms. Sweeney advised that plaintiffs' expert, Roger Noll, would not be available for deposition the week of October 12. At the same time, she recognized Apple's right to depose him on any supplemental declaration they might submit.

5. Given the complexity of the issues that plaintiffs are likely to raise in their opposition, the need to take and prepare for the expert's deposition, and the time required to take and review the deposition and prepare its reply brief, the seven day period on which plaintiffs insist is unreasonably short.

Dated: September 22, 2009

Respectfully submitted,

Jones Day

By: /s/ Robert A. Mittelstaedt
Robert A. Mittelstaedt

Counsel for Defendant
APPLE INC.